

25-7-6.14. Abatement of portion of child support--Modification.

If the child resides with the obligor ten or more nights in a month pursuant to a custody order, the ~~court~~ fact finder may, if deemed appropriate under the circumstances, grant an abatement of not less than thirty-eight percent nor more than sixty-six percent of the basic child support obligation for the nights the child resides with the obligor. ~~The order granting the abatement shall specify the number of nights for which the abatement is allowed and the amount of the abatement. In deciding whether an abatement is appropriate, the court shall consider whether it would have a substantial negative effect on the child's standard of living. The court shall allow the abatement to the obligor in the month in which the parenting time is ordered or apportion the abatement over a period of twelve months.~~ It shall be presumed that the parenting time is exercised. ~~If the parenting time exercised substantially deviates from the parenting time ordered, either party may petition the court for modification of the support order without showing any other change in circumstances.~~

In deciding whether an abatement is appropriate, the fact finder shall consider the fixed obligations of the custodial parent which are attributable to the child and to the increased non-duplicated costs of the noncustodial parent which are associated with the child's time with the noncustodial parent. The burden shall be on the noncustodial parent to demonstrate the increased costs which they incur for non-duplicated fixed expenditures such as routine clothing costs, costs for extra-curricular activities, school supplies, and other similar non-duplicated fixed expenditures.

The order granting the abatement shall specify the number of nights for which the abatement is allowed and the amount of the abatement. To calculate an abatement, the fact finder shall first determine the basic child support calculation (excluding additional costs such as health insurance or child care) and annualize the same. Thereafter, divide the annual amount by 365 days to ascertain the daily child support amount. Such amount is to be multiplied by the number of overnights the child spends with the noncustodial parent on a monthly basis and thereafter multiplied by the abatement percentage utilized. The figure shall be annualized and subtracted from the monthly child support obligation.

However, no abatement shall exceed the child support cross credit which may be allowed under SDCL 25-7-6.27.

If the noncustodial parent does not exercise the extended parenting time during a particular year, the noncustodial parent shall be required to repay the abated amount of child support to the custodial parent.

Source: SL 1989, ch 220, § 14; SL 1997, ch 154, § 7; SL 2001, ch 133, § 2; SL 2005, ch 134, § 3; SL 2009, ch 130, § 6.

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